IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EOLAS TECHNOLOGIES INCORPORATED,	
Plaintiff,	**Civil Action No. 6:15-cv-01038-RWS**
v.	**LEAD CASE**
AMAZON.COM, INC.	**JURY TRIAL**
Defendant.	

EOLAS'S RESPONSE TO DEFENDANTS' MOTION TO STRIKE INFRINGEMENT CONTENTIONS

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No. 2:13-cv-178-JRG, slip op. (E.D. Tex. Apr. 16, 2014) 1

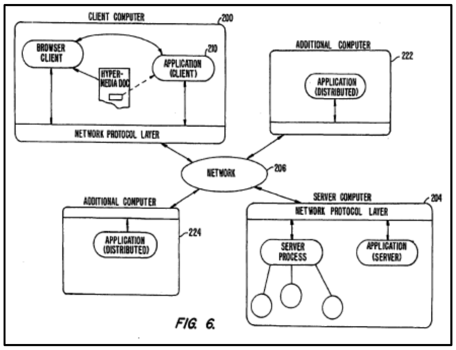
Defendants' Motion should be denied. Eolas's infringement contentions put Defendants on notice of Eolas's infringement theories. This notice is the purpose of infringement contentions. *Thomas Swan & Co. Ltd. v. Finisar Corp.*, No. 2:13-cv-178-JRG, slip op. at 2 (E.D. Tex. Apr. 16, 2014). Contentions "are not intended to require a party to set forth a prima facie case of infringement and evidence in support thereof." *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-CV-144, 2009 U.S. Dist. LEXIS 73217, at *27 (E.D. Tex. Aug. 18, 2009).

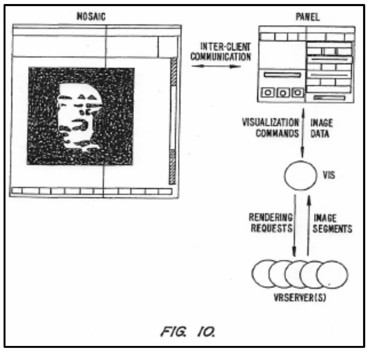
I. TECHNOLOGY BACKGROUND

The asserted claims[1] refer to items such as: (1) server; (2) client; (3) information; (4) World Wide Web / Internet ("Web"); (5) World Wide Web browser ("Web browser"); (6) interactive content application ("ICA"); (7) objects; (8) World Wide Web page ("Web page"); and (9) distributed application. At a high level, the broadest asserted claims (*e.g.*, '507 at claim 19), written from the perspective of the server (rather than the client), work as follows:

1) a server receives a request for information, over the Web, from a client;
2) the server responds to the request for information over the Web;
3) the client includes a Web browser, configured with multiple ICAs;
4) the information allows the Web browser to select an ICA that is invoked automatically and allows interaction with objects in Web pages; and
5) the selected ICA is part of a distributed application that is located on two or more computers that are remote from the client.

Figures 6 and Figure 10 of the '507 patent further illustrate the description above.


CLIENT COMPUTER
200
BROWSER CLIENT
HYPER-MEDIA DOC
APPLICATION (CLIENT)
210
ADDITIONAL COMPUTER
222
APPLICATION (DISTRIBUTED)
NETWORK PROTOCOL LAYER
NETWORK
206
ADDITIONAL COMPUTER
APPLICATION (DISTRIBUTED)
224
SERVER COMPUTER
204
NETWORK PROTOCOL LAYER
SERVER PROCESS
APPLICATION (SERVER)
FIG. 6.


MOSAIC
PANEL
INTER-CLIENT COMMUNICATION
VISUALIZATION COMMANDS
IMAGE DATA
VIS
RENDERING REQUESTS
IMAGE SEGMENTS
VRSERVER(S)
FIG. 10.

[1] A copy of the '507 patent is attached to Eolas's complaint. *E.g.*, Dkt. 34-1 ("'507").

For instance, Figure 6 shows an exemplary distributed application. The client has a browser (a Web browser), an application (an ICA), and a hypermedia document (*e.g.*, a Web page or object),[2] that communicate through a network (the Web).[3] Based on the information (here, a hypermedia document or object), the browser is able to select and automatically invoke the application. This allows a user to interact with the object and application, which is distributed across the network on at least three other computers (or servers).[4] Figure 10 shows Mosaic (a Web browser) with a 3D image (an object) in a Web page offered for interaction to a user. When the user does interact, including through the panel, VIS coordinates rendering done by VRServers, which art remote from the client.[5] This coordination may also be done by a computer, or server, remote from the client.[6]

II. ARGUMENT

On May 13, 2016—six weeks after Eolas served its infringement contentions—Defendants first alleged deficiencies with Eolas's contentions. Coincidentally (or not), these allegations began the day after Google's lead counsel referred to Eolas's infringement allegations as a "moving target" but later admitted "I haven't reviewed [Eolas's infringement disclosures] to ascertain whether we have objections to them or not yet." May 12, 2016 Hearing Tr. at 12:17-18, 82:18-20. A review of Defendants' complaints demonstrates their lack of merit.

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[2] '507 at 9:6-8 (regarding Fig. 5, "Hypermedia document 212 shown within client computer 200 is an example of a hypermedia document, or object, that a user has requested access to"), 11:3-6 ("FIG. 6 is similar to FIG. 5, except that additional computers 222 and 224 are illustrated. Each additional computer includes a process labeled 'Application (Distributed).'").

[3] '507 at 8:47-48 (noting in reference to Figure 5, which applies to Figure 6, "client computer 200 communicates with server computer 204 via network 206").

[4] '507 at 4:52-57 ("For purposes of this specification, client and server computers are categorized in terms of their predominant role as either an information requestor or provider. Clients are generally information requestors, while servers are generally information providers.").

[5] '507 at 11:22-24 ("In a preferred embodiment, distributed processing is coordinated by a program called 'VIS' … ."); *id.* at 16:37-55 (discussing use of VIS in Figure 10).

[6] '507 at 11:18-22 ("The coordination of the distributed processing can be performed at client computer 200 by application client 210, at server computer 204 by application server 220, or by any of the distributed applications executing on additional computers, such as 222 and 224.").

A. Defendants' Claim Term Complaints Are Misplaced.

Defendants' first complaints relate to Eolas's identification of how certain claim terms are met under Eolas's theories. As discussed below, Defendants overlook Eolas's contentions and instead use their Motion to advance non-infringement arguments.[7]

"interactive content application": As Eolas's contentions explain, Google's Search functionality acts as an interactive content application. *E.g.*, G12 at 24. Eolas's contentions also detail how Google's Search functionality is highly interactive. *Id.* at 11-23. Furthermore, Eolas's contentions explain how Google's Search functionality acts as part of a distributed application, located on multiple servers, *id.* at 50-53, and how the client-side portion of the interactive content application is sent by Google to the client, including at least one JavaScript file, *id.* at 31. The Google Search ICA enables communications between the client and Google's distributed server architecture. *Id.* at 11-23.

Moreover, Google itself, in a document cited by Eolas no less than 10 times in its contentions, refers to its Search functionality as "Google's Web search application." http://research.google.com/archive/googlecluster-ieee.pdf (last visited September 6, 2016). Thus, Defendants are not "left to further guess" Eolas's theory (Motion at 4)—it is spelled out in Eolas's contentions and Defendants' own documents.

[7] Herein, Eolas refers to its infringement contentions for Google Search as Defendants have focused on this specific accused feature. *E.g.*, Motion at 3 n.1 (noting that Defendants "use Eolas' allegations against what Eolas refers to as 'Search functionality' for each Defendant as representative"); *id.* at Exs. 1-5 (including only material from Google Search). Defendants have not argued that any issues exist in other charts that are not raised with respect to Google Search.

"information" / "request for information": Eolas's contentions contain numerous examples of information. First, Eolas's contentions explain that one type of information is the information requested "upon users attempting to visit www.google.com." G12 at 11. That is, a client may request a Web page, including its constituent parts, such as "an HTML page and corresponding files." *Id.* at 11-12. JavaScript is another type of requested information discussed in Eolas's contentions, for which Eolas includes exemplary citations of how and when such JavaScript is requested. *Id.* at 12-15.[8] Further types of requested information include search suggestions, instant search results, and filtered search results, each of which may be in the form of GET, XHR, AJAX or similar. *Id.* at 15-23, 41.

Moreover, each type of information allows a Web browser to (1) determine an object[9] to be displayed and (2) to display a Web page, which Eolas showed through Web page screen shots and network captures. *Id.* at 40-41 (citing *id.* at 11-23). For instance, HTML-like information, as shown on pages 11-15 of G12, allows a Web browser to display a Web page with a number of different presented objects, such as text, images, and more. AJAX-like information, as shown on pages 15-23 of G12, also allows a Web browser to display a Web page with presented objects, such as search suggestions, search results, and more for Search.

"distributed application" / "distributed interactive content application": As discussed above, Eolas identified Google's Search functionality as being distributed. Google itself refers to its Search functionality as "Google's Web search application" and that "[t]o provide sufficient capacity to handle query traffic, our service consists of multiple clusters distributed worldwide." http://research.google.com/archive/googlecluster-ieee.pdf (last visited September 6, 2016). A figure from that document, cited in Eolas's contentions and shown here juxtaposed with Fig. 6 from the '507 patent, shows the distributed nature of Google's Search.

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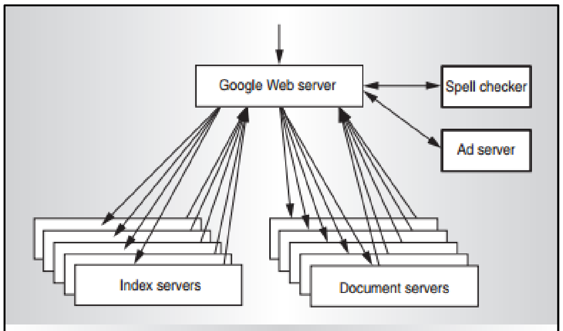
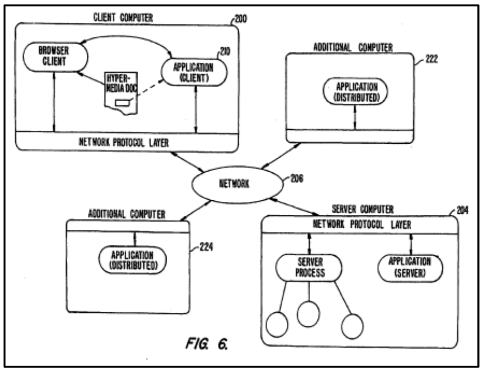
[8] Whether "Eolas's theories would make no sense if the same JavaScript is both the 'information' and the 'interactive-content application'" (Mot. at 4) is an infringement argument.

[9] The parties have agreed to the following construction for this term: "text, images, sound files, video data, documents and/or other types of information that is presentable to a user of a computer system." Dkt 154.


Google Web server
Spell checker
Ad server
Index servers
Document servers
Figure 1. Google query-serving architecture.


CLIENT COMPUTER
200
BROWSER CLIENT
HYPER-MEDIA DOC
APPLICATION (CLIENT)
210
NETWORK PROTOCOL LAYER
ADDITIONAL COMPUTER
222
APPLICATION (DISTRIBUTED)
NETWORK
206
ADDITIONAL COMPUTER
224
APPLICATION (DISTRIBUTED)
SERVER COMPUTER
204
NETWORK PROTOCOL LAYER
SERVER PROCESS
APPLICATION (SERVER)
FIG. 6

This theory applies to "distributed interactive content application" as well. G12 at 73-74.[10]

"object": Google's Search functionality includes a search database object. That is, a database or databases filled with voluminous amounts of information that can be displayed to a user. This can be seen in the above figure from Google's own document—the database includes indices, documents, ads, and dictionaries for spell checking. Users are able to interact with that object by typing, searching, filtering, using their mouse, clicking, and more. G12 at 11-23; *id.* at 28-29; *id.* at 34-40. Defendants' complaints are non-infringement arguments.

"coordination computers": As the figure above shows, Google's own document shows exemplary coordination. G12 at 58 (including figure from Google document). Eolas also explains that Google Web Server is an exemplary coordination computer and that "tasks such as the following are performed, including in a distributed and coordinated manner, including subtasks thereof: obtaining search results, including prior searches; obtaining ads; checking for misspellings; and similar." *Id.* at 57. Eolas's contentions further note that a client computer may perform the coordination. *Id.* at 58-61.

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[10] Note that the evidence, like Google's document, cited in Eolas's contentions is exemplary. When preparing its contentions, Eolas did not have access to Defendants' confidential documents and source code. Nor have Defendants produced all such documents and code reflecting their server architectures, which Eolas is trying to work with Defendants to remedy.

"automatically invoke[d]": Defendants are not "left guessing" how the interactive content application is invoked—Eolas states that "[n]o user activation is required for the user to interact with" the functionality after the client is in receipt. G12 at 40 (citing *id.* at 11-23). That is, a user navigates to a Web page and uses it as they normally would—no specific application activation is required. It appears seamless from the users' perspective. Defendants simply disagree with Eolas's theory, as evidenced by their claim construction proposal. Dkt. 154-2 at 8.

B. Defendants' Complaints About Which Websites Include the Accused Features Are Misplaced.

Defendants are also misguided in their complaints about Eolas's identification of which websites implement the Accused Features. Motion at 6-7. At bottom, these are non-infringement arguments. First, Defendants' complaint about Eolas accusing Google's search functionality across multiple, specifically identified Google properties (websites) is unwarranted. To ensure Google understood where its search functionality is located on different Google properties, Eolas even provided Google with exemplary screenshots showing where the search functionality is located on the different properties. Second, Defendants' complaint about Eolas's mobile website allegations ignores that Eolas has accused mobile implementations of only some accused features. The language Defendants point to in Exhibit 5 is articulated differently for different accused features depending on what is accused for the feature. Compare Motion Ex. 5 *with* Ex. A. The theories identified in the corresponding chart apply—to all identified platforms—and there is simply no reason to require additional screenshots and evidence. *See, e.g.*, *Mobile Telecommunications, LLC v. Sprint Nextel Corp.*, No. 2:12-cv-832-JRG-RSP, slip op. at 3 (E.D.

Tex. Apr. 25, 2014) (discussing P.R. 3-1 and stating that "this rule does not require a separate infringement chart for each accused device").

C. Defendants' Doctrine of Equivalents Complaints Are Misplaced.

Finally, Defendants prematurely complain about the doctrine of equivalents. Motion at 7. But, as Eolas noted in its contentions and has repeatedly told Defendants, its accusations in this case relate to literal infringement. Eolas's doctrine of equivalents position is that "Eolas reserves the right to amend its infringement contentions to assert infringement under the Doctrine of Equivalents with additional specificity, particularly in light of the Court's claim construction and Defendant's contentions."

III. CONCLUSION

For the reasons discussed above, Defendants' Motion should be denied.[11]

[11] Defendants suggest that the Court "delay[] claim construction and other deadlines recently set by the Court." Motion at 2. Defendants never raised this remedy with Eolas, and fail to articulate any reason why such a remedy would be necessary. That Defendants waited nearly a month to file their Motion after completing the meet and confer process undermines their request.

Dated: September 6, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on September 6, 2016.

/s/ James E. Quigley
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